

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT CLEVELAND**

IN RE

Case No. 19-14906-jps
CHAPTER 13

JEFFREY S. CARMAN
GLENDA CARMAN

JUDGE JESSICA PRICE SMITH

DEBTOR(S)

OBJECTION TO AMENDED PROOF OF
CLAIM 3-1 FILED BY CREDITOR U.S.
BANK NATIONAL ASSOCIATION AS
TRUSTEE

Debtors Jeffrey and Glenda Carman object to the Amended Proof of Claim 3-1 (the “Claim”) filed by U.S. Bank National Association as Trustee for Adjustable Rate Mortgage Trust 2005-5 Mortgage Backed Pass-Through Certificates, Series 2005-5 (hereinafter the “Creditor”)

In support of their objection, Debtors state the following:

1. Creditor filed the Amended Proof of Claim on January 22, 2020 (Claim No. 3-1)
2. The Claim lists a secured claim balance owed to the Creditor in the amount of \$113,402.68 and an amount necessary to cure any default as of the date of Debtors’ petition in the amount of \$7,841.33. *See* Claim at p. 2.
3. The pre-petition arrearage claim includes a purported escrow shortage as of the date of the filing of Debtors’ petition of \$765.43. *See* Claim at p. 4.
4. Debtors have reviewed the original filed claim along with all documentation Creditor provided in support of the Claim. After reviewing all documents, Debtors object to both the total secured claim amount of \$113,202.68 and the total pre-petition arrearage claim of \$7,841.33 as both figures are inaccurate based on Creditor’s own documentation.

Claimant attached a total of 58 pages of documents to the Claim. Page 15 of 58 is an “Off-Scheduled Escrow Statement”, dated August 12, 2019, which lists an escrow **surplus** in the amount of \$2751.53. Furthermore, this mortgage was modified (See pages 18-29 of POC), and the plain language of that modification states that \$51,314.19 of the principal balance was deferred, and was forgiven in increments of 1/3 (\$17,104.73) on 5/1/2017, 5/1/2018, and 5/1/2019. *See POC, page 20.* Claimants own payment records reflect that the account was current as of July 1, 2017. *See POC page 5.* The first two installments of debt forgiveness should have been credited but were not. Accordingly, Claimant’s total claim amount of \$113,402.68 and deferred balance of \$51,314.19 are each overstated by \$34,209.48. The Debtors state that the secured claim balances should be \$79,193.22 with a corrected deferred balance of \$17,104.73.

In addition to the secured claim figures being incorrect, Debtors have reviewed the escrow shortages and pre-petition figures. Claimant’s pre-petition arrearage of \$7,841.33, after removing the incorrect escrow shortage of \$765.43, and adding in the escrow surplus of \$2,751.53, is actually \$4,324.37.

Debtors would request an evidentiary hearing be held as necessary should Creditor file an Objection to Debtors’ Objection.

WHEREFORE Debtors Jeffrey Carman and Glenda Carman respectfully request that the Claim of Creditor U.S. Bank National Association as Trustee for Adjustable Rate Mortgage Trust 2005-5 Mortgage Backed Pass-Through Certificates, Series 2005-5 be partially disallowed in the amount of \$34,209.48 as to Creditor’s Secured Claim, be partially disallowed in the

amount of \$3,516.96 as to the pre-petition arrearage claim, be allowed in the amount of a secured claim in the amount of \$79,193.20, be allowed in the amount of a pre-petition arrearage claim of \$4,324.37, and for all other relief this Court may deem just and proper.

Respectfully submitted,

Date: April 3, 2020

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CERTIFICATE OF SERVICE

I hereby that on April 3, 2020, a copy of the foregoing Objection to Claim were sent electronically via the Court's CM/ECF system to the following registered ECF participants electronically through the Court's Electronic System at the email address registered with the Court:

US Trustee's Office Trustee@usdoj.gov

Lauren A. Helbling lauren@helblinglpa.comhelbling@ecf.epiqsystems.com

Chris E. Manolis, Esq. counsel for Creditors at cmanolis@logs.com

PRA Receivables Management, at claims@recoverycorp.com

And by regular U.S. mail, postage prepaid on:

Debtors, and all Creditors in attached Matrix.

/s/Brian D. Flick, Esq.

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DannLaw